

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

FRED ROHRBACKER,

Plaintiff,

v.

MODERN CONTINENTAL COMPANIES, INC.,
HARBOR CRUISES, LLC, BOSTON HARBOR
CRUISES, A JOINT VENTURE,
PROVINCETOWN PUBLIC PIER CORP., and
PROVINCETOWN-MACMILLAN REALTY
TRUST,

Defendants.

Civil Action No. 05-11562-RGS

Leave to file granted on 10/13/06.

**DEFENDANT PROVINCETOWN-MACMILLAN
REALTY TRUST'S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Fed. R. Civ. P. 56 and Local Rule 56.1, Defendant, Provincetown-MacMillan Realty Trust (the "Trust"), hereby files this motion for summary judgment on Count III of the First Amended Complaint filed by Plaintiff Fred Rohrbacker ("Rohrbacker"). As grounds for this motion, the Trust states:

1. Under Count III, Rohrbacker seeks damages predicated on a theory of premises liability for personal injuries allegedly sustained due to the Trust's negligence.

2. For the reasons stated in the Trust's memorandum of law, there exists no dispute of material fact relevant to Count III, and the Trust is entitled to judgment as a matter of law.

WHEREFORE, the Defendant, Provincetown-MacMillan Realty Trust, respectfully requests that this Court grant its Motion for Summary Judgment on Count III of the First Amended Complaint.

**PROVINCETOWN-MACMILLAN
REALTY TRUST**

By its attorney,

/s/ Kevin T. Smith
Kevin T. Smith, BBO#555507
MASTERMAN, CULBERT & TULLY LLP
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(617) 227-8010

Dated: November 15, 2006

CERTIFICATE OF SERVICE

I, Kevin T. Smith, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on November 15, 2006.

/s/ Kevin T. Smith
Kevin T. Smith

Dated: November 15, 2006